IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 441of 1999.

Reserved on: 5.3.2007.

Date of decision: 28.3.2007.

State of H.P. ... Appellant

Versus

Kuldip Chand … Respondent

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. Ashutosh Burathoki, Additional Advocate General.

For the respondent: Mr. R.P. Singh, Advocate.

V.K. Ahuja, J.:

This appeal has been filed by the appellant/State of H.P. against the judgment of the Court of learned Additional Chief Judicial Magistrate, Hamirpur, dated 4.2.1999, vide which the respondent was acquitted of the charge framed against him under Section 408 I.P.C.

Briefly stated the facts of the case are that a written complaint was sent to the police by Shri Harnam Singh, Sub Inspector, Cooperative Society, Bhareri on 1.9.1989 against the respondent alleging that in audit of accounts of the society, it was found that respondent who was former salesman of the Sabha had misappropriated the amount of the society to the extent of Rs.17,488.97 paise since deficiency in stock was found and the respondent had also failed to maintain account for the sale proceeds of fertilizer. It was alleged that the stock register

[1]Whether reporters of Local Papers may be allowed to see the judgment? No.

was being maintained by the respondent. The respondent admitted before the managing committee to deposit the amount and since he failed to deposit the whole amount, a case was registered against him. After investigation, the challan was filed before the learned trial Court who tried the respondent under Section 408 I.P.C., resulting in his acquittal.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General for the appellant and Mr. R.P.Singh, Advocate, for the respondent and have also gone through the record.

The submissions of the learned Additional Advocate General the appellant were that there is sufficient evidence on record to show that the stock was in the custody of the respondent who misappropriated the amount, for which there was audit report, but the same was not relied upon by the learned trial Court. It was also submitted that a sum of Rs.8000/- was deposited by the respondent out of total amount allegedly misappropriated, which proved that there was an admission on behalf of the respondent that he had misappropriated the amount though may be for temporary period and as such, findings of the learned trial Court to the contrary are liable to be reversed.

On the other hand, the learned counsel for the respondent had supported the impugned judgment for the reasons given therein.

On a perusal of the judgment of the learned trial Court, it is clear that the learned trial Court has referred to the evidence of the prosecution in regard to taking into possession the various documents including the stock register, appointment register etc. as well as the evidence in regard to taking of the specimen impression and the signatures of the respondent on the documents. The main ground taken for acquittal by the learned trial Court was that the respondent has been charged for being salesman of cooperative society and for misappropriation of the amount for he period 8.2.1989 to 27.8.1989.

However, a reference has been made to the statement of PW-14 Om Dutt who stated that the respondent remained as salesman of the society till 12.2.1989 and not beyond that but the report of the auditor is there for more than six months after the respondent had ceased to be salesman of the society. As per the observation made by the learned trial Court, the previous audit was conducted by one Devi Chand and was completed on 23.1.1989 in which no misappropriation was found. The auditor PW-14 completed the audit on 23.2.1990 as per his statement as PW-14, but the report was already sent by PW-18 Harnam Singh, complainant on 1.9.1989 for registration of the case.

It follows from the above discussion that in the previous audit report one month prior to the period when the respondent ceased to be the salesman of the society, no misappropriation was found. The subsequent audit report was being relied upon but the report to the police had already been made before the auditor could submit his report which was basis of the case filed against the respondent. This clearly shows that the action of the department in lodging the complaint as against the respondent was premature before the auditor had concluded his report. The prosecution had wrongly relied upon on the said report in full, though it was for a period more than period of six months when the respondent ceased to be the salesman. I am not making any observation in regard to the deposit of part of amount by the respondent particularly when the case has resulted in acquittal of the respondent for the reasoning given by the learned trial Court as mentioned above.

From the above discussion, it follows that the learned trial Court had given reasons for acquitting the respondent which reasonings can not be said to be perverse calling for an interference by this Court. However, I may clarify that the department is at liberty to proceed against the respondent departmentally, if so permitted by rules for

misappropriation of the amount. However, the net result of the discussion is that the findings of the learned trial Court do not call for an interference by this Court and as such, are liable to be dismissed. There is no merit in this appeal, which is dismissed accordingly. Bail bonds furnished by the accused/appellant stand discharged forthwith.

(V.K. Ahuja),
Judge

March 28, 2007
(BSS)